Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Mobile Relay Associates	)	File No.: EB-06-LA-283
Licensee of Station WPPF233 La Crescenta, CA	)	NAL/Acct. No.: 200732900006 FRN: 0001532027

MEMORANDUM OPINION AND ORDER

Adopted: May 29, 2008 **Released:** June 2, 2008

By the Associate Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order,* issued pursuant to Section 405 of the Communications Act of 1934, as amended ("Act"),[1] and Section 1.106 of the Commission's rules,[2] we deny a Petition for Reconsideration ("*Petition*") filed on October 5, 2007, by Mobile Relay Associates ("MRA"), licensee of Private Land Mobile Radio Services station WPPF233, in La Crescenta, California, of a *Forfeiture Order*[3] issued by the Western Region ("Region") of the Enforcement Bureau, imposing a three thousand, two hundred dollar ($3,200) monetary forfeiture penalty against MRA for willful and repeated violation of Section 1.903(a) of the Commission's Rules ("Rules").[4] The noted violation concerned MRA's operation of WPPF233 with an effective radiated power ("ERP") above the limit stated on its license, thereby, failing to use and operate the station only in accordance with the rules. For the reasons discussed below, we deny MRA's *Petition* and affirm the forfeiture.

II. BACKGROUND

2. On October 3, 2006, the Enforcement Bureau's Los Angeles Office received a complaint of interference from a licensee operating on the frequency 150.875 MHz in the Los Angeles, California, area. The complainant stated that a signal on 150.8825 MHz was the source of the interference.

3. The Commission's Universal Licensing System database lists MRA as the only entity authorized to operate on 150.8825 MHz in Los Angeles County. The license, under call sign WPPF233, authorized a base station on Mt. Lukens, La Crescenta, California, to operate with an ERP of 9 watts.

4. On October 11, 2006, a Los Angeles agent monitored the signal on 150.8825 MHz from the Los Angeles Office and measured the signal level on the frequency as -57 dBm.

5. On October 16, 2006, the agent again monitored the signal on 150.8825 MHz from the

[1] 47 U.S.C. § 405.

[2] 47 C.F.R. § 1.106.

[3] *Mobile Relay Associates*, 22 FCC Rcd 17317 (EB 2007) ("*Forfeiture Order*").

[4] 47 C.F.R. § 1.903(a).

Los Angeles Office and measured the signal level as -57 dBm. Later on that day, the Los Angeles agent, using a mobile direction finding vehicle, located the source of the signal on 150.8825 MHz emanating from Mt. Lukens. The agent then contacted MRA. The agent informed an MRA representative that an interference complaint had been received by the Los Angeles Office, and that the WPPF233 station on Mt. Lukens on 150.8825 MHz appeared to be the source of the interference. The agent informed the MRA representative that the station license limited the ERP to 9 watts.

6. On October 17, 2006, Los Angeles agents again monitored the signal on 150.8825 MHz from the Los Angeles Office and measured the signal level as -57 dBm. The agents then met an MRA representative on Mt. Lukens and inspected the WPPF233 station. The agents again measured the signal and calculated the WPPF233 ERP to be 184 watts.[5] During the inspection, the MRA representative reduced the transmitter power, and informed the agents that the station's power could not be lowered any further than an ERP of 15 watts. The MRA representative informed the agents that in the near future, an attenuator would be installed to reduce the ERP to 9 watts. Over-the-air measurements on 150.8825 MHz taken by Los Angeles agents at the Los Angeles Office corroborated the drop in ERP after the inspection on October 17, 2006, with the 150.8825 MHz signal measured at -67 dBm.

7. On October 25, 2006, an MRA representative called the Los Angeles Office and stated that the attenuator had been installed, and that the station was operating with 9 watts ERP. Over-the-air measurements on 150.8825 MHz taken by Los Angeles agents at the Los Angeles Office corroborated the further drop in ERP on October 25, 2006, resulting in a signal level of- 70 dBm on 150.8825 MHz.

8. On March 1, 2007, the Los Angeles Office issued a *NAL* in the amount of $4,000 to MRA.[6] In the *NAL*, the Los Angeles Office found that MRA apparently willfully and repeatedly violated Section 1.903(a) of the Rules by operating WPPF233 with an effective radiated power ("ERP") above the limit stated on the license, thereby, failing to use and operate the station only in accordance with the rules. MRA filed a response to the *NAL* on April 2, 2007 ("*Response*"). In its *Response*, MRA admitted that it had operated its station with too much power but argued that its overpower operation was inadvertent, because it inadvertently selected the wrong equipment from its inventory when it constructed WPPF233, and had it realized at that time what particular equipment was being installed for station WPPF233, it would have selected different equipment that operates at 9 watts ERP. MRA also argued that it took action to bring the station into compliance immediately after the Los Angeles Office's inspection, eliminating the co-channel interference, and that it was unaware that the FCC considered the delay in bringing the station into compliance with the terms of its license to be of any concern whatsoever. Finally, MRA argued that it had a history of compliance with the Commission's Rules.

9. In the *Forfeiture Order,* issued September 27, 2007, the Region considered all the issues raised by MRA and found that neither MRA's claim that it had inadvertently selected the wrong equipment nor its cooperation with the Los Angeles Office mitigated its liability in this case.[7] The Region determined that licensees are required to comply with the terms of their licenses, and are expected to correct errors when they are brought to the licensee's attention. The Region also found no merit to MRA's argument that the proposed forfeiture should be reduced because it immediately eliminated the co-channel interference once it was brought to MRA's attention by the Los Angeles Office. Citing a recent Enforcement Bureau case, the Region found that it is well established that absence of public harm

[5] The MRA representative informed the agents that the gain of the station's antenna was 5 dB, and the cable loss was 1 dB. These numbers, along with the transmitter power output reading observed by the agent's wattmeter, were used in the calculation of the ERP.

[6] *Notice of Apparent Liability for Forfeiture,* NAL/Acct. No. 200732900006 (Enf. Bur., Western Region, Los Angeles Office, released March 1, 2007).

[7] *Forfeiture Order*, 22 FCC Rcd at 17319.

is not considered a mitigating factor of a rule violation.[8] The Region also stated that the fact that WPPF233 ceased to cause interference after it reduced its ERP to 15 watts was irrelevant, because MRA continued to operate the station above the 9 watt ERP authorized on the WPPF233 license. The Region also noted that the *NAL* issued by the Los Angeles Office found that MRA apparently violated Section 1.903(a) of the Rules because MRA operated at an ERP above the limit stated on its license; MRA was not found apparently liable for causing interference. The Region also determined that MRA's authorization for WPPF233 limited operation of that station to nine watts ERP, yet MRA installed and operated equipment incapable of operating at less than 15 watts ERP, and then failed to immediately correct this violation once informed of the violation by the Los Angeles agents. Because MRA failed to do so, the Region found that MRA's violation of Section 1.903(a) was willful.[9] The Region also agreed with MRA's assertion that MRA had a history of compliance with the Commission's Rules, and reduced the forfeiture amount from $4,000 to $3,200.

III. DISCUSSION

10. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.[10] A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.[11] In its *Petition*, MRA does not dispute the fact that its operation was not in accordance with its station authorization. Instead, MRA argues that the Region failed to consider a mitigating factor in its assessment of the forfeiture against MRA. Specifically, MRA argues that the Region erroneously failed to consider the fact that MRA immediately eliminated all co-channel interference upon learning that its transmitter was operating at the wrong power. MRA further contends that the Region erroneously relied on a recent Enforcement Bureau case, *Lockheed Martin Corporation*, for the proposition that absence of public harm is not considered a mitigating factor of a rule violation, because that case, and that proposition are both incorrect and inconsistent with Commission's determination in the *Forfeiture Policy Statement*.[12] We find no merit to these arguments.

11. The Los Angeles Office and the Region found that MRA violated 1.903(a), by willfully and repeated operating WPPF223 with more power than was authorized by the terms of the station's authorization. MRA admits that when it constructed WPPF223, it installed equipment for station WPPF223 that was incapable of operating within the power limits authorized by WPPF223 license.[13] In other words, prior to the Los Angeles Office's inspection, MRA never operated WPPF223 in accordance with the power limitations on the WPPF223 authorization. Subsequent to being notified by the Commission field agents that station WPPF223 was operating with significantly more than its authorized power, MRA continued to operate the station with more than its authorized power. MRA does not

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[8] *Lockheed Martin Corporation*, 22 FCC Rcd 4116, 4119 (EB 2007) ("*Lockheed Martin*").

[9] MRA also argues that it actually corrected the violation on October 18, 2006, and would have informed the Los Angeles Office of this fact if MRA had been instructed to do so. While we accept MRA's statement that it corrected the violation on October 18, 2006, we find that MRA's violation was repeated because Los Angeles agents measured the WPPF233 ERP at levels greater than its authorization on several days prior to October 17, 2006.

[10] *See* 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.,* 15 FCC Rcd 18257, (EB 2000), *citing WWIZ, Inc.,* 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC,* 351 F.2d 824 (D.C. Cir. 1965), *cert. denied,* 383 U.S. 967 (1966).

[11] *EZ Sacramento, Inc.,* 15 FCC Rcd at 18257.

[12] *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines,* 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

[13] *Response* at 1.

dispute this violation. Rather, MRA asserts that because it "immediately eliminated the co-channel interference" caused by its unauthorized over-powered operation, the forfeiture assessed against it for its unauthorized over-powered operations should be reduced.[14] We disagree. We find that the Region correctly held that MRA willfully and repeatedly operated its station inconsistent with the terms of its authorization. The Region also correctly held that MRA's post-inspection reduction of power to 15 watts ERP, a level that was still above the nine watts ERP power authorized by the Commission for station WPPF223's operation, did not cure the violation and does not warrant mitigation of the forfeiture. As the Region correctly noted, licensees are required to comply with the terms of their licenses,[15] and are expected to correct errors when they are brought to the licensee's attention.[16]

12. Moreover, we find that, contrary to MRA's assertions, it also did not immediately eliminate all co-channel interference when notified by the Los Angeles agent. As detailed above, and in the *Forfeiture Order*, MRA was notified by the Los Angeles agent that its station WPPF233 was operating over power on October 16, 2006. The agent determined that MRA was operating at a calculated signal level equivalent to 184 watts, or more than twenty times MRA's authorized power. MRA did not immediately reduce its power because on October 17, 2006, Los Angeles agents again monitored WPPF233 and again found that the station was operating at a calculated signal level of 184 watts, again more than twenty times its authorized power. It was only after the Los Angeles agents performed an inspection did MRA even make an effort to reduce power and eliminate the co-channel interference. By MRA's own admission, the co-channel interference was not cured until October 18, 2006. Therefore, we find no merit to MRA's argument that it immediately eliminated all co-channel interference. We affirm the Region's determination that no reduction in the base forfeiture amount was appropriate for MRA's efforts to eliminate the co-channel interference or come into compliance with the terms of its authorization subsequent to the Los Angeles agent's inspection.

13. We also find no merit to MRA's argument that the Region erroneously relied on a recent Enforcement Bureau case, *Lockheed Martin Corporation* ("*Lockheed Martin*") for the proposition that absence of public harm is not considered a mitigating factor of a rule violation, because, MRA asserts, the *Lockheed Martin* and the proposition for which it is cited are both incorrect and inconsistent with Commission's determination in the *Forfeiture Policy Statement*. While *Lockheed Martin* was released by the Enforcement Bureau, Spectrum Enforcement Division, in 2007, it is not inconsistent with *Forfeiture Policy Statement*, which was released by the Commission in 1997, concerning the mitigating value of absence of public harm. *Lockheed Martin* states that "it is well established that the absence of public harm is not considered a mitigating factor of a rule violation."[17] MRA has produced no caselaw that has overruled this finding in *Lockheed Martin*, or in the prior Commission decisions that also announce this or similar holdings. As MRA asserts, the Commission's *Forfeiture Policy Statement* discusses harm, stating that the guidelines are based "on the degree of harm or potential for harm that may arise from the

[14] We note first that the Los Angeles Office did not find MRA apparently liable for causing interference, even though MRA concedes that the overpowered operation of WPPF223 caused co-channel interference to another licensed station. We note also that the base forfeiture amount for interference is $7000. *See* 47 C.F.R. § 1.80(b).

[15] 47 C.F.R. § 1.903(a). *Forfeiture Order*, 22 FCC Rcd at 17319.

[16] The Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture. *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002). *Forfeiture Order*, 22 FCC Rcd at 17319.

[17] *Lockheed Martin*, 22 FCC Rcd at 4119, citing to *Pacific Western Broadcasters, Inc.*, 50 FCC 2d 819 (1975) (rejecting a broadcaster's claim that the forfeiture should be downwardly adjusted because its operations at excessive power levels did not cause public harm or complaint, because the Commission not only is concerned with actual interference, but is concerned with the potential for interference). *See also, Auburn Broadcasters, Inc.,* 41 FCC 2d 462 (1973); *The McLendon Corp.*, 18 FCC 2d 224 (1969).

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violation,"[18] and that "[a]lthough the base amount is the starting point in assessing a forfeiture, the forfeiture may be decreased below the base amount or increased to the statutory maximum when the adjustment criteria are considered based on the facts of the case."[19] However, the Commission did not include "lack of harm" in its downward adjustment criteria.[20] It did include "substantial harm" as part of its upward adjustment criteria.[21] The adjustment factors included by the Commission in its downward adjustment criteria, in Section 1.80, are: (1) minor violation; (2) good faith or voluntary disclosure; (3) history of compliance; and (4) inability to pay.[22] We find that the Region properly considered the downward adjustment criteria and concluded that MRA's violation, which, by its own admission resulted in co-channel interference, and which consisted of WPPF233 operating repeatedly at more than twenty times its authorized power was not a minor violation. MRA did not assert that it was entitled to a reduction for good faith or voluntary disclosure to the Commission, prior to Commission involvement, nor did MRA make any showing asserting an inability to pay.

14. We have considered the arguments raised by the MRA in its *Petition* and find they are unpersuasive. Therefore, we deny the MRA's *Petition*, and affirm the Region's *Forfeiture Order* finding MRA liable for a forfeiture in the amount of $3,200.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,[23] and Section 1.106 of the Commission's Rules,[24] Mobile Relay Associates' Petition for Reconsideration, filed October 5, 2007, **IS DENIED,** and the Region's *Forfeiture Order* **IS AFFIRMED.**

16. Payment of the forfeitures ordered by the Region and affirmed by this Memorandum Opinion and Order shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.[25] Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A

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[18] *Forfeiture Policy Statement*, 12 FCC Rcd at 17098.

[19] *Forfeiture Policy Statement*, 12 FCC Rcd at 17101.

[20] *See* 47 C.F.R. § 1.80(b)(4).

[21] 47 C.F.R. § 1.80(b)(4). *See Liberty Cable Co., Inc.,* 16 FCC Rcd 16105, 16113 (2001) (lack of substantial public harm does not by itself insulate a violator from the imposition of the statutory maximum forfeiture amount if the other upward adjustment factors are present).

[22] 47 C.F.R. § 1.80(b)(4).

[23] 47 U.S.C. § 405.

[24] 47 C.F.R. § 1.106.

[25] 47 U.S.C. § 504(a).

(payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Mobile Relay Associates shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

17. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Mobile Relay Associates, at its address of record, and David J. Kaufman, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Associate Chief, Enforcement Bureau